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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/537,542

03/31/2006

Hartmut Breithaupt

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EXAMINER

NIESZ, JASON KAROL

ART UNIT

PAPER NUMBER

3751

MAIL DATE

DELIVERY MODE

10/26/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/537,542	Applicant(s) BREITHAUP, HARTMUT	
	Examiner JASON K. NIESZ	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>03/31/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement (IDS) submitted on 03/31/2006 was considered by the examiner.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 8-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 8 recites the limitation " $m < n$ " in line 5. There is insufficient antecedent basis for this limitation in the claim.

Claim 8 recites the limitation "determining the average of n filling instances," it is not clear what is being determined here.

Claim 12 recites the limitation " m is increased dynamically from 1 to n ," it is not clear what this means. Furthermore, the act of increasing m to n seems to contradict the statement in claim 1 of using $m < n$ filling instances.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 8-11, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant's admitted prior art.

In Re claim 8 at Page 4, lines 24-32 applicant describes a method for controlling the after-run amount in a filling unit comprising determining the average of n filling instances. Applicant further discloses after a change in filling conditions, averaging over n filling instances.

Applicant admitted prior art does not disclose averaging the after-run value over m instances, where m is less than n .

However, one of ordinary skill in the art would know that the number of filling instances averaged to determine an after run value could be advantageously varied in response to filling conditions. Therefore, it would have been obvious to one of ordinary skill in the art to modify the method in the applicant admitted prior art by reducing the number of filling instances averaged after receiving a signal indicating changes in the filling conditions, in order to more quickly calculate the after-run amount using fill values which do not represent the disruption caused by the change.

In Re claim 9, one of ordinary skill in the art would recognize a machine-start/stop signal as a change in the filling conditions.

In Re claims 10 and 11 applicant admitted prior art discloses the claimed invention except for the range of values to use for n and m . It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the claimed ranges, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the

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optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

In Re claim 13 it was well known in the art at the time of the invention to design an apparatus to shut down after a predetermined period of idleness. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of the applicant admitted prior art by signaling a machine-stop in the event that the filling process is idle for a time, in order to signal a change in filling conditions.

In Re claim 14 it was well known in the art at the time of the invention to manually instigate an external machine-stop/start. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have a machine-stop or start signal generated by an external signal, in order to signal a change in the filling conditions.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Tulley (US Patent 5,431,302) discloses a beer filling apparatus which averages a dynamically increasing number of filling instances to determine an after-run amount.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON K. NIESZ whose telephone number is (571)270-3920. The examiner can normally be reached on mon-fri 9-4.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jason K Niesz
Examiner
Art Unit 3751

/Gregory L. Huson/
Supervisory Patent Examiner, Art Unit 3751